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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,560	09/21/2007	Klaus Grohe	D4700-00425	4206
8933 7590 09/08/2010 DUANE MORRIS LLP - Philadelphia IP DEPARTMENT 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103-4196			EXAMINER YOUNKINS, KAREN L	
			ART UNIT 3751	PAPER NUMBER
			MAIL DATE 09/08/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/585,560	<b>Applicant(s)</b> GROHE, KLAUS	
	<b>Examiner</b> KAREN YOUNKINS	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3,7-17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 7-17, and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/2/2010, 1/13/2010</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This action is responsive to the amendment dated 3/1/2010, the request for continued examination on 3/12/2010, and the information disclosure statements dated 6/2/2010 and 1/13/2010.
2. Claims 1, 3, 7-17, and 19 are currently pending in the application.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the cone at the end of the pipe as set forth in claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

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Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “1” has been used to designate both a pipe and a wall rod. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The limitation of a “cone at an end” of a pipe was not found in the specification. The specification does discuss a ‘conical bracket’ 22 that is not shown to be conical in the figures, however a “cone” as set forth in claim 1 was not found in the specification.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

8. Regarding Claim 12, the specification states “the wall bracket can exhibit an additional hose guide which is preferably located behind the wall rod, thus, between the wall rod and the wall.” In the response filed 6/8/2009, applicant has amended the claim language to read “the wall support and the mounting bracket form a hose guide for positioning the outlet hose”. The hose guide disclosed in the specification as originally filed is not described as being formed by the mounting bracket. Further, the hose guide in the specification discloses the hose guide is preferably located between the wall rod and the wall, but as is clearly shown in the drawings the mounting bracket is not disposed between the wall rod and the wall but rather is disposed on the non-wall side of the wall rod. This is the only hose guide disclosed in the specification.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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10. Claims 1, 3, 7-17, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Regarding Claim 1, the language “a substantially perpendicular surface” renders the claim indefinite. As currently claimed, this surface could be any surface in space as there is no indication of what the surface must be perpendicular to. Further regarding Claim 1, the claim sets forth that the wall rod and the mounting bracket are separate components. The claim further sets forth that the mounting bracket comprises the pipe. The specification sets forth pipe 1 is the same as wall rod 1, which would mean that the pipe is not part of the mounting bracket as required by claim 1. The drawings have been objected to in pp-4 for using the same reference character for both the wall rod and the pipe. The language “pipe with a cone” also renders the claim indefinite. It is unclear to the examiner what portion of applicant’s invention corresponds to either the pipe or the cone. The limitation of “cone” is not disclosed in the specification nor shown in the drawings.

12. With reference to claim 12, it is unclear how the wall support and the mounting bracket form a ‘hose guide’ for positioning the hose. The hose is positioned within the mounting bracket for use, but it is unclear how in use the combination of the wall support and mounting bracket perform the claimed function of “positioning the outlet hose behind the wall rod and in the space between the wall rod and the perpendicular surface”. Further, Claim 12 recites the limitation “the space” in page 3. There is insufficient antecedent basis for this limitation in the claim.

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13. In reference to claim 16, as currently written claim 16 is dependent on claim 4 however claim 4 has been cancelled. For the purposes of examination, the examiner assumes claim 16 is intended to be dependent on claim 1.

14. In light of the above, the claims are examined as best understood.

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 1, 3, 7-8, 12, and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of US Patent Application Publication 2003/0221251 to Tse in view of USPN 5,833,192 to Buhrman.

17. Regarding Claims 1, 3, 7, and 14-16, Tse teaches a wall rod 1, and a mounting bracket 4 that comprises a lengthwise extension of the wall rod and is formed as a continuation extending the wall rod upwardly (from the position of the wall rod below 4, for example shown where reference character '1' points in figure 1). The mounting bracket 4 is curved and comprises an open pipe 14 with an opening at an end/along the pipe that forms a 'slot'. The opening/slot is formed and sized for receiving shower attachment 12, as discussed in pp [0012]. The wall bracket is 'pivotably' attached to the wall rod as the bracket is slidably inserted onto 2 and may pivot freely until the clamp portion 7 attaches the two components together. The bracket may pivot freely again when the button 13 is depressed to release the clamp. A longitudinal axis of the wall

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rod is where the bracket may pivot. A centerline of the mounting bracket lies in a plane that includes a longitudinal axis of the wall rod.

Tse fails to show a wall support, and further fails to show a 'cone' at an end of the pipe.

Burhman, however, teaches double-bent wall supports 42/44 resulting in the ability to affix the rod to a bathroom wall for use in a shower.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have included a double-bent wall support as taught by Burhman in the shower support of Tse to affix the support to a shower wall. It would have been further obvious to one having ordinary skill in the art to have modified the shape of the pipe 14 to correspond with the shape of the shower attachment being inserted into the pipe. As discussed in pp [0012] the opening is shaped to provide a frictional connection between the inserted piece and the opening. Therefore it would have been obvious to one having ordinary skill in the art to have provided the opening with a 'cone' or conical like portion to provide a frictional fit if the shower attachment to be inserted and held by the bracket was correspondingly shaped. Further, a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

18. Regarding claims 12, as previously discussed in pp-17 above, the wall support and the mounting bracket 4 form a 'hose guide' in so much as the instant application does. In use, a hose can be 'guided' into the mounting bracket for storage and the wall support is supporting the bracket/rod in place in the shower.

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19. Regarding Claim 8, as previously discussed in pp-17 above, further the wall support is 'laterally opposite' the rod. Burhman teaches the double-bent wall supports 42/44 and the wall rod is at least half the diameter D of the hose H. It would have been further obvious to have made the distance at least half the diameter as claimed to allow for the hose to go behind the rod and keep it out of the way of the user.

20. The initial statement of intended use (claim 1 line 1) and all other functional limitations thereto, have been fully considered but do not appear to impose any patentably distinguishing structure over that disclosed by the modified Tse.

21. Claims 9-11, 13 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tse and Burhman as applied to claim 1 above and further in view of USPN 4,726,552 to Warshawsky.

22. As previously discussed in pp-17 above, Tse discloses all of the claimed features except for a swivel bearing located in the wall support.

Warshawsky teaches a wall support 80/90, which includes a swivel bearing 140 for a shower outlet holder 60.

It would have been obvious to one of ordinary skill in the art to replace the bearing in Tse with the alternative bearing in Warshawsky because both bearings provide a rotating motion and the Warshawsky bearing allows for the mounting bracket to be connected to the top of the wall rod and prevent the mounting bracket from reaching the wall. Tse as now modified teaches a stepped/indexed swivel motion as claimed.

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23. Regarding Claims 13 and 19, as previously discussed in pp-17 above, further Tse fails to teach an additional bracket located on the wall rod, wherein the additional bracket swivels around the wall rod. The examiner takes official notice that it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided an additional bracket on the wall rod to provide increased support between the wall rod and the wall. It would have been further obvious to have provided this support with a swivel bearing as taught by Warshawsky for the reasons discussed in pp-22 above. The brackets are adjustable in height as the entire wall bracket system is capable of being moved up and down in height and mounted at various points on a wall.

### ***Response to Arguments***

24. Applicant's arguments filed 3/1/2010 have been fully considered but they are not persuasive.

25. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims are definite and supported. These allegations are not persuasive.

26. On page 5 the applicant has asserted that the examiner has asserted there is confusion with the term "additional". The examiner respectfully submits that the applicant is confused regarding the examiner's rejection of claim 12 under 35 U.S.C. 112, first paragraph, as set forth in pp-12-13 above. Claim 12 is rejected to in pps 12-13 above because the disclosure is not enabling as to the claim language "the wall

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support and the mounting bracket form a hose guide". The applicant has failed to specifically identify a portion of the specification as originally filed that enables this claim language. The examiner is unsure what applicant means by the statement "One cannot properly object to the clarity of the claim language on this point, because neither the claims nor the disclosure support the examiner's suggestions". This allegation is not persuasive.

27. On page 6 the applicant has asserted that there is no basis for the examiner to require the description of the mounting bracket in figure 1 be consistent with the description of a different element. The examiner is unsure what the applicant intends to say in this argument. The examiner has not required the description of the mounting bracket in figure 1 to be consistent with the description of a different element.

28. The statement "The conclusions in the official action that the disclosure does not support the claims or that something is inconsistent between the claims and disclosure is completely unsupported and erroneous" is not persuasive. The statement "The claims are definite" is not persuasive. The statement "The disclosure is clear and provides enabling support for the subject matter claimed" is not persuasive. These statements are mere allegation of patentability. The applicant has failed to address the specific concerns of the examiner's rejections under 35 U.S.C. 112.

29. Applicant's arguments with respect to claims 1 and 12 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN YOUNKINS whose telephone number is (571)270-7417. The examiner can normally be reached on Monday through Friday 7:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. Y./  
Examiner, Art Unit 3751

/Gregory L. Huson/  
Supervisory Patent Examiner, Art Unit 3751